C/Iron & Steel/51

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File No. 33/51

LEGAL DEPT

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Subject:—

Opinion on the Iron and Steel (Control of Production & Distribution) Order

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C O N T E N T S.

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Iron and Steel (Control of Production and Distribution) Order, 1941

Clause 11B

It appears that Messrs. D.V. Patel of Ahmedabad, Engineers and Contractors, were allotted 45 tons of iron and steel for Government development projects from the stocks held by the office of the Provincial Iron and Steel Rationing Officer, Bombay on 20-12-1947. Shri Dahyabhai was informed on 27th December 1947 that the approximate cost of this allotment was Rs. 13,020/- which amount should be sent to the office of the Provincial Iron and Steel Control Rationing Office by a R.T.R.x or a demand draft in favour of the Assistant Agricultural Engineer in charge of Iron Supply Scheme Bombay Payable in Bombay and the necessary depatching insturctions would be issued as soon as the draft was received. On 30th December 1947 Shri Dahyabhai Patel wrote to the Assistant Agricultrual Engineer to say that he had sent the draft on the Bank of India for Rs. 13,020/-as desired and the despatch of the said steel should be made early. On recept of the draft it appears that the Assistant Agricultural Engineer directed the office to do the needful at once. On further enquireis the Assistant Agricultural Engineer to Government Wrote to the Assistant Housing Commissioner Construction that he had written to Shri Dahyabhai to arrange for the delivery of the materials as soon as it was ready for despatch. It appears from the note at page 15 ante that the materials were ready on 27th December 1947 and the advance payment was received on 3rd January 1948 and the materials were ultimately despatched on 3ed March 1948. In the meantime, the Iron Steel controller, Calcutta had declared by a notification in an extra-Ordinry Gazette dated the 27th January 1948 that the prices of iron and steel should be increased for the type of the steel supplied to Shri Dahyabhai Patel. This notificationwas made applicable to all deliveries effected on or after 27th January 1948 with

the result that a although in the present case the contract was complete before the aforesaid notification came into operation, still the prices were increased retrospectively. In these circumstances, Shri Dahyabhai was called upon to pay the excess price, but he has refused so to do on the ground that the contract for the supply of iron and steel was complete by the time the Government of India issued this aforesaid notification. Remembrancer of Legal Affairs is requested to advise.

2. It appears that the Iron and Steel(Control or Production and Distribution) Order, 1941 was issued under the Defence of India Rules and has been continued under the Essential Supplies(Temporary Powers) Act, 1946. Under clause 11-B of this Order power vests in the Controller to fix by notification in the Gazette of India the maximum prices at which any iron and steel may be sold etc. In exercise of thatk powrer Government issued the first notification No. EC 1/-P9 dated 23rd March 1946 fixing the maximum prices of the various types of iron and steel. It appears that general condtions were attached to this Order. The notification was amended from time to time. On 27th January 1948 a notification was issued fixing the maximum prices under clause 11-B of the Order and general condtions were attached to this Order. Condtion 1 of these conditions lays down:- " The prices shown in the the Schedule of Base prices and the other provisions of this circular relevant thereto, shall come into force with effect from 27th January 1948 and notwithstanding the rates at which an order has been booked, shall apply to all deliveries effected on or after the above date. In all cases where delivery is effected by rail, the date of the Railway Receipt shall be deemed to be the date of delihvery" Clause 11-B of the Iron and Steel(Control of Production and Distribution) Order does not provide for

attaching any condtions. Ordinarily the power given to the Controller to fix the maximum prices would not authorise him to fix such prices retrospectively so as to affect the contracts which have already been concluded- ed. The effect of condition No. 1 of the general conditions attached to the order fixing the prices is to apply the rates to all articles delivered after 27th January 1948 notwithstanding the fact that the agreement in respect thereof was concluded previously at rates less than the maximum fixed by the Orderr. As stated above, the Controller is not given power under the Order to fix the maximum prices retrospectively. Consequently, the condition No. 1 of the general condtions, it appears, would be ultra vires in so far as it relates to prices of articles delivered after 27th January 1948 when the contracts in respect thereof are concluded long before that date.

3. In the present case it appears that the contract was concluded long before 27th January 1948. Under section 4, sub-section(3)of the Sale of Goods Act: "Where under a contract of sale the property in the goods is transferred from seller to the buyer the contract is called the sale; but where the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled the contract is called an agreement to sell." Under section 19, sub-section(1)"Where there is a contract for sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred." Section 20 provides that "When there is an unconditional contract for the sale of specific goods in a deliverable state,------ the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed." from the

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From the note at page 15 ante it is clear that the materials in the present case were allotted on 27hhk December 1947 and the advance payment was received on 3rd January 1948. It would therefore follow that the materials were ascertained and were ready for delivery by the time the Government of India notification of 27-1-1948 was passed. It appears therefore that although the materials were not actually despatched for want of railway wagons, the property in the materials had long passed to Shri Babyabhai Patel and consequently the Government of India notification dated 27th January 1948 would not apply to the contract of sale which had been concluded long before. Prima facie therefore it appears that Shri Babyabhai Patel would not be liable to pay the excess price. If Government desires to pursue the matter it appears necessary to inquire from the Central Government as to under what provisions of law these general conditions were attached to the order issued under clause 11-B of the Iron and Steel Control Order so that the legal implications thereof may be further examined. The limitation for enforcing the claim against Shri Babyabhai Patel is sixty years and not three years as stated in the note of the office of the Agriculture and Forests Department office of the Agricultural Iron and Steel Supply Officer.

Sd/-

Additional Secretary to Government.

U.R. to A.& F.D. No. G- 121 ,dated the 2nd April 1951.

M.R.D.
26-7-56

Legal Department

Clause 8 of the Iron and Steel(Control of Production and Distribution) Order, 1948 provides that a person acquiring iron or steel in accordance with the provisions of clause 4 shall not use the iron or steel otherwise than in accordance with any conditions contained or incorporated in the document which was the authority for the acquisition. Under Government of India, Ministry of Industry and Supply, Notification No.1(1)-1(771) dated the 2nd November 1948 the Provincial Iron and Steel Rationing Officer, Bombay has been authorized under clause 2(a)to exercise the powers of the Controller under clause 4 to issue orders authorizing any person to acquire Iron and Steel from a registered stockholder. Presumably the permit issued by the Provincial Iron and Steel Rationing Officer in this case is under clause 4 and not under clause 10 B. If that is so, then as the acquistion was for the purpose of "stable shed at Uttarsanda, District Kaira." and the actual use to which it has been put is for 'hay godown at the village Gotal', Shri Patel has clearly contravened conditions 8 of his permit and has rendered himself liable for prosecution for breach of clause 8 of the Order. The view taken by the Senior Police Prosecutor that the case is not likely to succeed in the Court is not correct. The purpose of the acquisition is that mentioned in the permit and not in the application for the permit. Besides Shri Patel obtained the sheets by representing to the Milk Commissioner that he wanted the sheets for use in his Uttarsanda Cattle Farm and the Milk Commissioner therefore recommended his application. The Police Prosecutur says that there is also the plea of bonafides for the accused. This is also not correct. The view taken by the

Labour and Housing Department that the case is a fit one for launching a prosecution is correct.

Sd/-

Additional Secretary to Government.

U.R. to L.& H.D. No.G- 348,dated the 7th August 1951.

M.R.D.
26-7-56
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